the grand jury system where still required,[14] but its antiquity promises it life for another generation.

REGULATION OF ATTORNEYS' FEES FOR THE PROSECUTION OF CLAIMS AGAINST THE UNITED STATES. — It is, of course, within the power of Congress to regulate the payment of claims against the United States and to fix the conditions upon which such payments may be made. Thus, Congress may forbid the assignment of a claim against the government,[1] or any agreement to give a lien thereon.[2] Moreover, statutes fixing the compensation of the attorneys employed by the claimant, and making criminal the receipt of a greater amount, have been held within the legislative power.[3] But a recent case shows that there are certain constitutional restrictions on this power. An attorney acting under a contract for a 33⅓ per cent contingent fee secured a judgment for his client in the Court of Claims, on account of property taken during the Civil War. Congress thereupon passed a special appropriation act, limiting the attorney's fee to 20 per cent. It was held that the attorney could recover his full fee from his client, the restriction being unconstitutional. *Moyers* v. *Fahey*, 43 Wash. L. Rep. 691.[4]

It is clear that the attorney's contract is not void as the assignment of a claim against the United States,[5] since even an agreement to pay a certain percentage out of the amount recovered is not an assignment *pro tanto*,[6] unless the attorney is expressly given a lien.[7] Nor by the weight of authority is a contract for a contingent fee objectionable.[8] Since, then, the contract was valid and binding when made, it is protected under the due process clause from arbitrary impairment.[9] It is true that the Supreme Court, in *Ball* v. *Halsell*,[10] held that a statute

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[14] See REPORT OF ROYAL COMMISSION ON DELAY IN THE KING'S BENCH DIVISION, presented to Parliament February 10, 1914, recommending the abolition of the grand jury in England. Also similar recommendations by Mr. Taft to the New York Constitutional Convention, 1 VA. L. REG. (n. s.) 226.

[1] Spofford *v.* Kirk, 97 U. S. 484. See Hager *v.* Swayne, 149 U. S. 242, 247; Ball *v.* Halsell, 161 U. S. 72.

[2] See Nutt *v.* Knut, 200 U. S. 12, 20.

[3] United States *v.* Fairchilds, Fed. Cas. No. 15,067, 1 Abb. 74; United States *v.* Marks, Fed. Cas. No. 15,721, 2 Abb. 531; United States *v.* Van Leuven, 62 Fed. 52 (pensions); Ball *v.* Halsell, 161 U. S. 72 (Indian depredations).

[4] See RECENT CASES, this issue, p. 331.

[5] Assignments of claims against the United States before the issuance of the warrant are void. U. S. COMP. STAT. 1913, § 6383.

[6] Trist *v.* Child, 21 Wall. (U. S.) 441; Wright *v.* Tebbetts, 91 U. S. 252; Roberts *v.* Consaul, 24 A. C. (D. C.) 551; Wassell *v.* Armstrong, 35 Ark. 247. *Contra*, Jones *v.* Blacklidge, 9 Kan. 562.

[7] Nutt *v.* Knut, 200 U. S. 12. *Contra*, see Jones *v.* Rutherford, 26 A. C. (D. C.) 114, 120.

[8] Wylie *v.* Coxe, 15 How. (U. S.) 415; Taylor *v.* Bemiss, 110 U. S. 42; Bergen *v.* Frisbie, 125 Cal. 168, 57 Pac. 784; Matter of Hynes, 105 N. Y. 560, 12 N. E. 60. *Contra*, Ackert *v.* Barker, 131 Mass. 436.

[9] "A vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference." COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 517.

[10] 161 U. S. 72. The right to recover for Indian depredations is based on treaties with the Indians, by which it was agreed that the United States should indemnify those

establishing a court to try claims arising from Indian depredations and fixing the compensation of attorneys for prosecuting claims there invalidated a previous contract for a larger fee. But that decision is clearly distinguishable from the principal case, for Congress, in establishing a new tribunal in which the United States may be sued, has power to regulate the conditions under which attorneys may practice there. There is, in fact, no doubt that Congress could at any time abolish the Court of Claims, and so deprive attorneys of compensation promised them for prosecuting a claim there. But after the attorney has performed his contract and the Court of Claims has rendered judgment, it seems an unjust interference with his rights under the contract for Congress, after appropriating the money, to restrict the claimant in his payment of creditors.

Thus, the result of the principal case is wholly satisfactory. The court, however, based its decision on the broad ground that the legislature cannot interfere with liberty of contract, and neglected to consider the exceptions that must be made to such a sweeping rule. It is submitted that Congress might nullify preëxisting unexecuted contracts by forbidding any attorney to practice in the Court of Claims unless he agreed not to demand more than a fixed fee, since the regulation of that court is entirely within the legislative power. Moreover, it would seem that the legislature might constitutionally declare that in future all contracts for an excessive contingent fee should be void. Such a statute would be a declaration of public policy and a justifiable exercise of the police power. Such a rule, as applied to claims against the government, would involve little more restraint on freedom of contract than the restrictions against assignments and liens, which are of unquestioned validity.[11] Similar statutes fixing the compensation of pension attorneys have often been held constitutional.[12] It must be remembered, however, that the pension cases are to a certain extent *sui generis*, since Congress, under its power to "raise and support an army," [13] has full control over the pension laws and can in every way regulate the method of distribution.[14] Indeed, it would seem that even executed contracts with pension attorneys might be nullified by the legislature, since the licensed pension attorney is, in a sense, the creature of Congress, and at all times subject to its regulation, to the extent that Congress considers necessary for the protection of the pensioners, who are wards of the government.

If the payment of the claim in the principal case could be regarded as a conditional gift, which might be recovered back if the condition were broken, it would seem unjust and inequitable to compel a forfeiture. But it is clear that the payment in such a case is not a mere gratuity, but the fulfillment of an obligation, since an implied contract to make

injured and get reimbursement out of the annuities of the Indians who were at fault. See McKinzie *v.* United States, 34 Ct. Cl. 278, 286.

[11] See notes 1, 2, and 5, *supra*.

[12] United States *v.* Fairchilds, Fed. Cas. No. 15,067; United States *v.* Marks, Fed. Cas. No. 15,721; Frisbie *v.* United States, 157 U. S. 160.

[13] U. S. CONST., art. I, § 8.

[14] See United States *v.* Fairchilds, Fed. Cas. No. 15,067; United States *v.* Hall, 98 U. S. 343, 353.

compensation arises under Article V, when property is taken for the use of the United States.[15] Since the United States cannot be sued without its consent, the contract is not enforcible at law; but a moral obligation clearly exists. A conditional gift of money can only be recovered in quasi-contract;[16] and there can be no recovery in quasi-contract if the money paid, though not legally due, was due *ex aequo et bono*.[17] Accordingly, the enforcement of the contract cannot result in any loss to the claimant beyond the amount of the fee he agreed to pay.

RECENT CASES

ASSAULT AND BATTERY — CRIMINAL RESPONSIBILITY — FORCIBLE PREVENTION OF WRONGFUL LEVY ON DEFENDANT'S PROPERTY. — The defendant, using no unnecessary force, resisted a constable who attempted to attach his goods as the property of another person. *Held*, that he is guilty of a criminal assault. *State* v. *Selengut*, 95 Atl. 503 (R. I.).

It is a general rule that a trespasser may be resisted with reasonable force. See 1 BISHOP, CRIMINAL LAW, 8 ed., § 861. A wrongful attachment is a trespass. *Buck* v. *Colbach*, 3 Wall. (U. S.) 334; *McAllaster* v. *Bailey*, 127 N. Y. 583, 28 N. E. 591. Therefore, on strict principle, it would seem justifiable to resist a wrongful attachment. Some authority supports this view. *Commonwealth* v. *Kennard*, 8 Pick. (Mass.) 133; *Wentworth* v. *People*, 4 Scammon (Ill.) 550; *Lassiter* v. *State*, 163 S. W. 710 (Tex.). *Cf. Smith* v. *State*, 105 Ala. 136, 17 So. 107. However, since the protection of property by personal force involves a breach of the peace, it is submitted that the rule permitting it can only be justified when the alternative offered by the legal remedies is seriously inadequate. Now, in a wrongful attachment a protection to the owner, not present in a private trespass, is afforded by the liability of the attaching officer on his bond. See 2 FREEMAN, EXECUTIONS, 3 ed., § 272. Furthermore, if private persons were permitted to resist wrongful attachments, it would give debtors an opportunity to resist rightful attachments until they had secreted or disposed of their goods, and would entirely defeat the purpose of mesne attachments. Hence it would seem that there should be no right to resist attachment by force, and the weight of authority supports this view. *State* v. *Downer*, 8 Vt. 424; *Faris* v. *State*, 3 Oh. St. 159; *State* v. *Richardson*, 38 N. H. 208; *People* v. *Hall*, 31 Hun (N. Y.) 404. It is true that an illegal arrest may everywhere be resisted. *State* v. *Belk*, 76 N. C. 10; *Massie* v. *State*, 27 Tex. App. 617, 11 S. W. 638. But such an arrest is an irreparable personal injury which cannot be adequately compensated in damages.

BANKS AND BANKING — NATIONAL BANKS — COLLATERAL ATTACK ON *ULTRA VIRES* ACT — AUTHORITY TO PURCHASE STOCK IN BUILDING CORPORATION AS INCIDENTAL TO SECURING BANKING QUARTERS. — A national bank

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[15] Brooke *v.* United States, 2 Ct. Cl. 180; Wixon *v.* United States, 14 Ct. Cl. 59.

[16] Williamson *v.* Johnson, 62 Vt. 378, 20 Atl. 279. But if a chattel is given conditionally, a breach of condition is a forfeiture, and the donor may replevy the chattel. Halbert *v.* Halbert, 21 Mo. 277.

[17] Farmer *v.* Arundel, 2 Wm. Bl. 824; Goddard *v.* Seymour, 30 Conn. 394. See Moses *v.* MacFerlan, 2 Burr. 1005, 1012. See KEENER, QUASI-CONTRACTS, 43 *ff.*

Cf. the rule concerning "natural obligations" in the Roman law. See 2 ROBY, ROMAN PRIVATE LAW, 81.